

(i) The ratio of the Board-regulated institution's total capital to standardized total risk-weighted assets; and

(ii) The ratio of the Board-regulated institution's advanced-approaches-adjusted total capital to advanced approaches total risk-weighted assets. A Board-regulated institution's advanced-approaches-adjusted total capital is the Board-regulated institution's total capital after being adjusted as follows:

(A) An advanced approaches Board-regulated institution must deduct from its total capital any allowance for loan and lease losses included in its tier 2 capital in accordance with § 217.20(d)(3); and

(B) An advanced approaches Board-regulated institution must add to its total capital any eligible credit reserves that exceed the Board-regulated institution's total expected credit losses to the extent that the excess reserve amount does not exceed 0.6 percent of the Board-regulated institution's credit risk-weighted assets.

(4) *Supplementary leverage ratio.* An advanced approaches Board-regulated institution's supplementary leverage ratio is the simple arithmetic mean of the ratio of its tier 1 capital to total leverage exposure calculated as of the last day of each month in the reporting quarter.

(d) *Capital adequacy.* (1) Notwithstanding the minimum requirements in this part, a Board-regulated institution must maintain capital commensurate with the level and nature of all risks to which the Board-regulated institution is exposed. The supervisory evaluation of the Board-regulated institution's capital adequacy is based on an individual assessment of numerous factors, including the character and condition of the institution's assets and its existing and prospective liabilities and other corporate responsibilities.

(2) A Board-regulated institution must have a process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive strategy for maintaining an appropriate level of capital.

[Reg. Q, 78 FR 62157 and 62285, Oct. 11, 2013, as amended at 78 FR 62286, Oct. 11, 2013]

§ 217.11 Capital conservation buffer and countercyclical capital buffer amount.

(a) *Capital conservation buffer.* (1) *Composition of the capital conservation buffer.* The capital conservation buffer is composed solely of common equity tier 1 capital.

(2) *Definitions.* For purposes of this section, the following definitions apply:

(i) *Eligible retained income.* The eligible retained income of a Board-regulated institution is the Board-regulated institution's net income for the four calendar quarters preceding the current calendar quarter, based on the Board-regulated institution's quarterly Call Report, for a state member bank, or the FR Y-9C, for a bank holding company or savings and loan holding company, as applicable, net of any distributions and associated tax effects not already reflected in net income. Net income, as reported in the Call Report or the FR Y-9C, as applicable, reflects discretionary bonus payments and certain distributions that are expense items (and their associated tax effects).

(ii) *Maximum payout ratio.* The maximum payout ratio is the percentage of eligible retained income that a Board-regulated institution can pay out in the form of distributions and discretionary bonus payments during the current calendar quarter. The maximum payout ratio is based on the Board-regulated institution's capital conservation buffer, calculated as of the last day of the previous calendar quarter, as set forth in Table 1 to § 217.11.

(iii) *Maximum payout amount.* A Board-regulated institution's maximum payout amount for the current calendar quarter is equal to the Board-regulated institution's eligible retained income, multiplied by the applicable maximum payout ratio, as set forth in Table 1 to § 217.11.

(iv) *Private sector credit exposure.* Private sector credit exposure means an exposure to a company or an individual that is not an exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the

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European Commission, the International Monetary Fund, a MDB, a PSE, or a GSE.

(3) *Calculation of capital conservation buffer.* (i) A Board-regulated institution's capital conservation buffer is equal to the lowest of the following ratios, calculated as of the last day of the previous calendar quarter based on the Board-regulated institution's most recent Call Report, for a state member bank, or FR Y-9C, for a bank holding company or savings and loan holding company, as applicable:

(A) The Board-regulated institution's common equity tier 1 capital ratio minus the Board-regulated institution's minimum common equity tier 1 capital ratio requirement under §217.10;

(B) The Board-regulated institution's tier 1 capital ratio minus the Board-regulated institution's minimum tier 1 capital ratio requirement under §217.10; and

(C) The Board-regulated institution's total capital ratio minus the Board-regulated institution's minimum total capital ratio requirement under §217.10; or

(ii) Notwithstanding paragraphs (a)(3)(i)(A)–(C) of this section, if the Board-regulated institution's common equity tier 1, tier 1 or total capital ratio is less than or equal to the Board-regulated institution's minimum common equity tier 1, tier 1 or total capital ratio requirement under §217.10, respectively, the Board-regulated institution's capital conservation buffer is zero.

(4) *Limits on distributions and discretionary bonus payments.* (i) A Board-regulated institution shall not make distributions or discretionary bonus pay-

ments or create an obligation to make such distributions or payments during the current calendar quarter that, in the aggregate, exceed the maximum payout amount.

(ii) A Board-regulated institution with a capital conservation buffer that is greater than 2.5 percent plus 100 percent of its applicable countercyclical capital buffer, in accordance with paragraph (b) of this section, is not subject to a maximum payout amount under this section.

(iii) *Negative eligible retained income.* Except as provided in paragraph (a)(4)(iv) of this section, a Board-regulated institution may not make distributions or discretionary bonus payments during the current calendar quarter if the Board-regulated institution's:

(A) Eligible retained income is negative; and

(B) Capital conservation buffer was less than 2.5 percent as of the end of the previous calendar quarter.

(iv) *Prior approval.* Notwithstanding the limitations in paragraphs (a)(4)(i) through (iii) of this section, the Board may permit a Board-regulated institution to make a distribution or discretionary bonus payment upon a request of the Board-regulated institution, if the Board determines that the distribution or discretionary bonus payment would not be contrary to the purposes of this section, or to the safety and soundness of the Board-regulated institution. In making such a determination, the Board will consider the nature and extent of the request and the particular circumstances giving rise to the request.

TABLE 1 TO §217.11—CALCULATION OF MAXIMUM PAYOUT AMOUNT

Capital conservation buffer	Maximum payout ratio (as a percentage of eligible retained income)
Greater than 2.5 percent plus 100 percent of the Board-regulated institution's applicable countercyclical capital buffer amount.	No payout ratio limitation applies.
Less than or equal to 2.5 percent plus 100 percent of the Board-regulated institution's applicable countercyclical capital buffer amount, and greater than 1.875 percent plus 75 percent of the Board-regulated institution's applicable countercyclical capital buffer amount.	60 percent.
Less than or equal to 1.875 percent plus 75 percent of the Board-regulated institution's applicable countercyclical capital buffer amount, and greater than 1.25 percent plus 50 percent of the Board-regulated institution's applicable countercyclical capital buffer amount.	40 percent.

TABLE 1 TO § 217.11—CALCULATION OF MAXIMUM PAYOUT AMOUNT—Continued

Capital conservation buffer	Maximum payout ratio (as a percentage of eligible retained income)
Less than or equal to 1.25 percent plus 50 percent of the Board-regulated institution's applicable countercyclical capital buffer amount, and greater than 0.625 percent plus 25 percent of the Board-regulated institution's applicable countercyclical capital buffer amount.	20 percent.
Less than or equal to 0.625 percent plus 25 percent of the Board-regulated institution's applicable countercyclical capital buffer amount.	0 percent.

(v) *Other limitations on distributions.* Additional limitations on distributions may apply to a Board-regulated institution under 12 CFR 225.4, 12 CFR 225.8, and 12 CFR 263.202.

(b) *Countercyclical capital buffer amount.* (1) *General.* An advanced approaches Board-regulated institution must calculate a countercyclical capital buffer amount in accordance with the following paragraphs for purposes of determining its maximum payout ratio under Table 1 to § 217.11.

(i) *Extension of capital conservation buffer.* The countercyclical capital buffer amount is an extension of the capital conservation buffer as described in paragraph (a) of this section.

(ii) *Amount.* An advanced approaches Board-regulated institution has a countercyclical capital buffer amount determined by calculating the weighted average of the countercyclical capital buffer amounts established for the national jurisdictions where the Board-regulated institution's private sector credit exposures are located, as specified in paragraphs (b)(2) and (3) of this section.

(iii) *Weighting.* The weight assigned to a jurisdiction's countercyclical capital buffer amount is calculated by dividing the total risk-weighted assets for the Board-regulated institution's private sector credit exposures located in the jurisdiction by the total risk-weighted assets for all of the Board-regulated institution's private sector credit exposures. The methodology a Board-regulated institution uses for determining risk-weighted assets for purposes of this paragraph (b) must be the methodology that determines its risk-based capital ratios under § 217.10. Notwithstanding the previous sentence, the risk-weighted asset amount for a private sector credit exposure that is a

covered position under subpart F of this part is its specific risk add-on as determined under § 217.210 multiplied by 12.5.

(iv) *Location.* (A) Except as provided in paragraphs (b)(1)(iv)(B) and (b)(1)(iv)(C) of this section, the location of a private sector credit exposure is the national jurisdiction where the borrower is located (that is, where it is incorporated, chartered, or similarly established or, if the borrower is an individual, where the borrower resides).

(B) If, in accordance with subparts D or E of this part, the Board-regulated institution has assigned to a private sector credit exposure a risk weight associated with a protection provider on a guarantee or credit derivative, the location of the exposure is the national jurisdiction where the protection provider is located.

(C) The location of a securitization exposure is the location of the underlying exposures, or, if the underlying exposures are located in more than one national jurisdiction, the national jurisdiction where the underlying exposures with the largest aggregate unpaid principal balance are located. For purposes of this paragraph (b), the location of an underlying exposure shall be the location of the borrower, determined consistent with paragraph (b)(1)(iv)(A) of this section.

(2) *Countercyclical capital buffer amount for credit exposures in the United States—*(i) *Initial countercyclical capital buffer amount with respect to credit exposures in the United States.* The initial countercyclical capital buffer amount in the United States is zero.

(ii) *Adjustment of the countercyclical capital buffer amount.* The Board will adjust the countercyclical capital buffer amount for credit exposures in the

United States in accordance with applicable law.⁶

(iii) *Range of countercyclical capital buffer amount.* The Board will adjust the countercyclical capital buffer amount for credit exposures in the United States between zero percent and 2.5 percent of risk-weighted assets.

(iv) *Adjustment determination.* The Board will base its decision to adjust the countercyclical capital buffer amount under this section on a range of macroeconomic, financial, and supervisory information indicating an increase in systemic risk including, but not limited to, the ratio of credit to gross domestic product, a variety of asset prices, other factors indicative of relative credit and liquidity expansion or contraction, funding spreads, credit condition surveys, indices based on credit default swap spreads, options implied volatility, and measures of systemic risk.

(v) *Effective date of adjusted countercyclical capital buffer amount.* (A) *Increase adjustment.* A determination by the Board under paragraph (b)(2)(ii) of this section to increase the countercyclical capital buffer amount will be effective 12 months from the date of announcement, unless the Board establishes an earlier effective date and includes a statement articulating the reasons for the earlier effective date.

(B) *Decrease adjustment.* A determination by the Board to decrease the established countercyclical capital buffer amount under paragraph (b)(2)(ii) of this section will be effective on the day following announcement of the final determination or the earliest date permissible under applicable law or regulation, whichever is later.

(vi) *Twelve month sunset.* The countercyclical capital buffer amount will return to zero percent 12 months after the effective date that the adjusted countercyclical capital buffer amount is announced, unless the Board announces a decision to maintain the adjusted countercyclical capital buffer amount or adjust it again before the expiration of the 12-month period.

⁶The Board expects that any adjustment will be based on a determination made jointly by the Board, OCC, and FDIC.

(3) *Countercyclical capital buffer amount for foreign jurisdictions.* The Board will adjust the countercyclical capital buffer amount for private sector credit exposures to reflect decisions made by foreign jurisdictions consistent with due process requirements described in paragraph (b)(2) of this section.

[Reg. Q, 78 FR 62157 and 62285, Oct. 11, 2013, as amended at 78 FR 62286, Oct. 11, 2013]

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Subpart C—Definition of Capital

§ 217.20 Capital components and eligibility criteria for regulatory capital instruments.

(a) *Regulatory capital components.* A Board-regulated institution's regulatory capital components are:

- (1) Common equity tier 1 capital;
- (2) Additional tier 1 capital; and
- (3) Tier 2 capital.

(b) *Common equity tier 1 capital.* Common equity tier 1 capital is the sum of the common equity tier 1 capital elements in this paragraph (b), minus regulatory adjustments and deductions in § 217.22. The common equity tier 1 capital elements are:

(1) Any common stock instruments (plus any related surplus) issued by the Board-regulated institution, net of treasury stock, and any capital instruments issued by mutual banking organizations, that meet all the following criteria:

(i) The instrument is paid-in, issued directly by the Board-regulated institution, and represents the most subordinated claim in a receivership, insolvency, liquidation, or similar proceeding of the Board-regulated institution;

(ii) The holder of the instrument is entitled to a claim on the residual assets of the Board-regulated institution that is proportional with the holder's share of the Board-regulated institution's issued capital after all senior claims have been satisfied in a receivership, insolvency, liquidation, or similar proceeding;